

**City of Wichita
District Advisory Board Meeting
December 2023**

TO: District 4 Advisory Board Members

SUBJECT: Ordinance Creating Chapter 20.12 of the Code of the City of Wichita Pertaining to Retaliatory Evictions

INITIATED BY: City Manager's Office – Development Services

AGENDA: New Business

Recommendation: Provide comment regarding ordinance.

Background: Over the years, the City has received reports of retaliation from housing providers in the rental market. These reports include accusations of eviction because of housing code complaints. Upon inspection, staff has occasionally observed substandard housing conditions, including but not limited to pest/rodent infestations, inoperable mechanical and/or plumbing equipment, and leaky roofs resulting in mold and mildew. Studies suggest that these types of property maintenance issues are directly related to adverse health outcomes.

Since August of 2022, the City has met with a number of community stakeholders including the KC Regional Housing Alliance, Rental Owners, Inc., South Central Kansas Realtors, Inc., the Wichita Regional Chamber, and a number of landlords across the City in an effort to garner input, feedback, and recommendations for addressing the situation. These issues have also been discussed at a number of neighborhood meetings and at a few District Advisory Board meetings. One recommendation that has continually been introduced is a retaliatory eviction ordinance.

Presently, the issue of retaliatory evictions among landlords and tenants in the City of Wichita is governed by state law. Under K.S.A. 58-2572, a landlord may not retaliate against a tenant by increasing rent or decreasing services after the tenant complains of habitability concerns to the landlord or governmental agency or the tenant has organized with a tenant's union or similar organization. Retaliation by the landlord constitutes a defense by the tenant for an eviction action. The tenant may also seek damages for diminished services consistent with state law.

At the same time, state law provides that a landlord may increase rent – even after a tenant complains of habitability concerns or organizes with a tenants' union – so long as the rent increase does not conflict with the relevant lease agreement and is made in good faith to compensate the landlord for expenses. Similarly, a landlord may bring an eviction action against the tenant for nonpayment of rent, for causing the underlying habitability concern, or to ensure compliance with the applicable building or housing code.

State law provides limited remedies to a tenant faced with unlawful retaliation by a landlord. Other than potential damages for diminished services and a limited eviction defense, a tenant is not afforded any additional protections against unlawful retaliation and a landlord is not subject to any further penalties.

Given the lack of protections, tenants in the City of Wichita face the prospect of unlawful retaliation when raising habitability complaints or organizing with tenant's unions. Reports of unlawful retaliation appear to vary by district, depending on where concentrations of rental properties are located. But such reports have been consistently raised with different Council Members, such as those from District 1 and District 3. Recent local news coverage has further attempted to contextualize the problem in Wichita.

The proposed ordinance adds to state law on the topic of retaliatory evictions by instituting fines for a conviction based on retaliatory eviction. The proposed ordinance is modelled on a similar ordinance passed by the City of Topeka in July, 2023.

The proposed ordinance generally relies on definitions provided by state law to regulate the landlord-tenant relationship. One notable exception is not excluding manufactured or mobile homes from the definition of "dwelling unit" so that the ordinance applies to such units rather than resort to an additional set of rules (as occurs under state law).

The ordinance also details what constitutes unlawful retaliation by a landlord in a manner consistent with state law. Like state law, unlawful retaliation is defined to include commencing eviction, increasing rent, or reducing services within six months of the tenant complaining of habitability concerns or organizing with a tenant's union. Also consistent with state law, the ordinance explicitly deems certain actions to not be retaliatory even if they would otherwise meet the definition provided in the ordinance. Under this exception, a landlord may still seek possession when rent is unpaid, the tenant is violating the lease agreement, the tenant caused the habitability concern complained of, the lease ends, or eviction is necessary to comply with applicable building or housing codes (such as demolition).

When a tenant is subject to unlawful retaliation, the ordinance provides an administrative process to evaluate that claim. Claims must be submitted within 180 days of the last act of unlawful retaliation. The tenant should submit a written complaint and affidavit (on forms prepared by the City) with sufficient information to allow evaluation by a City investigator. The complaint may be referred to a mediator, with costs paid by the City, though a party may choose not to participate in mediation. If mediation is unsuccessful, an investigation occurs where the respondent landlord has an opportunity to submit an answer and evidence for evaluation.

Following the investigation period, the Law Department is tasked with evaluating the investigation materials to determine whether probable cause exists that the respondent landlord engaged in unlawful retaliation. If probable cause does not exist, the case is closed by the City. If probable cause does exist, the Law Department will request settlement among the parties before referring the matter to a Municipal Court judge for review, who shall sit as an administrative judge for the proceeding. The administrative judge shall set a hearing and the rules of evidence used by courts of law need not be strictly enforced. Any determination by the administrative judge shall be made by a preponderance of evidence and shall set forth the essential elements and facts. That determination can be appealed like other municipal court rulings.

If the administrative judge determines unlawful retaliation occurred, certain escalating penalties can be imposed. Fines should be not less than \$250 or more than \$1,000 for a first conviction, not less than \$500 or more than \$1,500 for a second conviction, not less than \$750 or more than \$2,000 for a third conviction, and not less than \$1,000 or more than \$2,500 for a fourth or subsequent conviction. The prevailing party may also seek reasonable and necessary costs and fees from the case.

Financial Considerations: It is anticipated that the City would contract for certain investigative and mediation services to implement this ordinance. Staff estimates costs for mediation services to be about \$750 per complaint, while costs for investigative services depend on a number of variables that cannot be reliably predicted at this time. Further, the costs could be offset by civil penalties imposed under the ordinance, though such revenue also cannot be reliably predicted.

Legal Considerations: The ordinance has been prepared and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the District Advisory Board provide comment regarding the ordinance.

Attachment: Ordinance.